

PROB 12B  
(7/93)Clerk  
District Court

## United States District Court

FEB 16 2006

for

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

the Northern Mariana Islands

**Report for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**  
(Probation Form 49, Waiver of Hearings is Attached)Name of Offender: **Jesse A. Villagomez** Case Number: **CR 03-00020-001**Name of Sentencing Judicial **Alex R. Munson**Date of Original Sentence: **June 15, 2004**Original Offense: **Conspiracy to Distribute and Possess with Intent to Distribute a Controlled Substance, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846**Original Sentence: **15 months imprisonment followed by a three year term of supervised release with conditions to include: not commit another federal, state, or local offense; not unlawfully possess a controlled substance and refrain from any unlawful use of a controlled substance; submit to one drug test within 15 days after release from imprisonment and at least two periodic drug tests thereafter; not possess a firearm or other dangerous weapon or destructive device; participate in a program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; make co-payment for the program at a rate to be determined by the U.S. Probation Office; and perform 400 hours of community service under the direction of the U.S. Probation Office**Type of Supervision: **Supervised Release** Date Supervision Commenced: **July 13, 2005**Assistant U.S. Attorney: **Timothy E. Moran** Defense Attorney: **Loren Sutton****PETITIONING THE COURT**

To extend the term of supervision for \_\_\_\_\_ years, for a total term of \_\_\_\_\_ years.



To modify the conditions of supervision as follows:

## CAUSE

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

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On September 2, 2005, the Ninth Circuit, in United States v. Stephens , No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated Jesse Villagomez's history of drug use, and the drug detection period of his drug of choice. As methamphetamine is considered one of the drugs of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender.

To address the implications of United States v. Stephens Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Mr. Villagomez's mandatory condition to set the maximum number of tests he must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

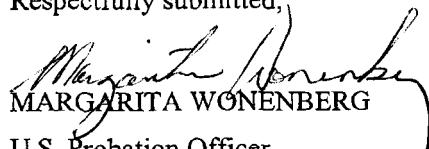
Jesse Villagomez has agreed to the above modification and attached is a Probation From 49 Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision with his consent.

Reviewed by:

  
ROSSANNA VILLAGOMEZ-AGUON  
U.S. Probation Officer  
Supervision Unit Leader

Date: 2/16/06

Respectfully submitted,

by:   
MARGARITA WÖNENBERG

U.S. Probation Officer

Date: 2/16/06

THE COURT ORDERS

- No Action
- The Extension of Supervision as Noted Above.
- The Modification of Conditions as Noted Above.
- Other



Signature of Judicial Officer

2-16-06

Date

PROB 49  
(3/89)

*United States District Court*

for

*District of Northern Mariana Islands*

**Waiver of Hearing to Modify Conditions  
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

That the defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer;

Witness: Margarita DLG. Wonenberg  
U.S. Probation Officer

Signed: Jesse A. Villagomez  
Probationer or Supervised Releasee

2/02/06  
Date